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## **Response by The Notaries Society to the consultation paper**

### **Transformational Government - Enabled by Technology**

**Issued by the Cabinet Office**

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### **Submission**

1. It seems clear that the government's purpose behind its Transformational Government paper is to show intent to drive forward the widespread take-up of new technology that will deliver the services that citizens expect and put into effect the savings and efficiencies to be derived from use of electronic communication and exchange. The aims are commendable.
2. Much of the text is given over to the challenge of putting in place the shared services that are required for achievement of these goals. We read that the paper is being presented as a bold strategy; that the Prime Minister and Heads of Departments are behind the Cabinet Office initiative; that foundations are being laid for radical change; that groups are being set up to oversee the processes, and that encouragement is being given to 'continuing innovation' that will support and facilitate.
3. There is in our view, however, a serious flaw. The paper skates around the fundamental issue of identity authentication, and nowhere in the paper can an ordinary citizen or small businessman read words of assurance that will give him the confidence to engage, extensively and without reservation, in internet enabled transactions.

4. In para 10 we read that identity management and information assurance are crucial for modernisation of government. In para 19 it is recognised that public use of internet and telephone is rising and that information assurance risks come increasingly from theft of identity and personal data. But it is not until para 39 that information assurance and identity management are mentioned again, and then only in the context of listed areas to be addressed in anticipation of the 2007 Comprehensive Spending Review.
5. It is true that the paper in para 39 does make mention of measures such as product marking schemes, promotional campaigns about internet safety, allocation of citizen and business numbers for Gateway users, but these can only have superficial success in instilling the confidence that is needed.
6. It would be tedious, and unhelpful to the eGovernment team, if I were to go through each paragraph trying to clarify where the strategy might be improved with respect to what is seen from the notaries' point of view as curious omission. I therefore propose to add to my submission selected extracts from a project partnership proposal paper that The Notaries Society is currently drafting with a view to putting it to relevant government officials and parliamentarians.
7. For the purpose of responding to the Transformational Government paper, text is highlighted where the main messages lie. Further, the bullet points in para 24 (Notaries Society paper) are recommended as actions which might well be suitable for consideration with the actions outlined in para 21 (Cabinet Office paper) as required to achieve the vision of the Strategy.
8. The extract from the draft of The Notaries Society pilot project proposal paper follows below.

## **e-Notarisation and Authentication of Identity: relevance to the Transformational Government Strategy paper**

### Foreword

1. Information exchanged between correspondents electronically via internet communication channels is at risk of being read or altered without the knowledge of the owners of that information..... The upshot is that criminal activity is made easier when paper information is converted into unseen electronic binary bits - which is why people are untrusting and cautious about using internet for transactions more valuable or sensitive than low cost low risk leisure purchases. For government to be able to realise its political goals in this area, the 'take-up by people' issue must be solved - which is the focus of the Transformational Government Strategy paper.

### Protecting electronic information: setting the scene

3. Since the start of the e-Commerce debate in the 1990s, which predated the passing into statute of the e-Communications Act 2000, there have been innumerable papers written, seminars held and projects undertaken to promote the advantages, for citizens and businesses, of moving from paper based to electronic means of communication. Current government thinking, as reaffirmed in the Strategy paper, is adamant that UK should lead the world in the take-up of internet enabled business transactions and electronic service delivery to citizens.

4. Readers well know that the critical mass required for this to become a reality is impeded by a complexity of issues, not least of which is that citizens and businesses do not have confidence in entrusting their personal and corporate data into what is little more than smoke and mirrors. **The main reason for slow take-up is that no-one has, authoritatively or satisfactorily, answered the following questions:**

- 1. Is my correspondent who he/she says he/she is?*
- 2. Who will rescue or recompense me if things go very wrong?*
- 3. How do I know that data held about me and/or my company on disparate data bases are always correct, consistent and complete, and accessible only to people with genuine need to know?*

5. For some years IT industry suppliers have pushed technical solutions as the 'information security' answer, with emphasis directed towards the confidentiality and data integrity aspects. Unfortunately such solutions (in particular, PKI e-certification) are unmanageable from a user point of view. ....Legislation [has added to] misunderstanding and confused thinking around the dichotomies of flexibility versus prescription, protection versus freedom, individual versus corporate..... Banking and national security agents have continued to initiate own proprietary systems for what can be termed closed groups. Difficult problems pertaining to people (whether users or beneficiaries) became sidelined, and effort was deflected into solving peripheral (albeit crucial) issues. For example, transmission via secure communication protocols was embedded in plans for modernisation of the law enforcement and criminal justice systems.

7. Since the general election, political urgency has turned erstwhile government carrots into sticks, and the Transformational Government Strategy paper is a last stand. If, after the end of the consultation period, the strategy does not take identity authentication seriously into consideration, its fine words about efficiencies and savings through the removal of departmental barriers to shared services will ring empty, and temptation to mask failures will not diminish. **Identity authentication, if underwritten by liability insurance and recognised globally in courts of different jurisdictions, is the only way to kick start the move away from paper based working - and this is the enabling factor still being ignored.**

#### Reasons for writing this paper

8. The reasons for writing this paper are twofold;
- (a) to point out to all interested parties that notaries, as the oldest arm of the legal profession, are uniquely placed to take on a fully trusted intermediary role - as and where required - in the e-world of today, and
  - (b) to propose a partnership project [with government officials] to put this claim to the test.
9. If an e-notarisation project can successfully provide answers to Questions 1 and 2 above, and if the Transformational Government Strategy can identify ways of introducing measures to provide satisfactory answers to Question 3, the interests of citizens and businesses (and also of government) might well be met.....

#### What can notaries effectively offer?

10. The notary is a highly qualified lawyer providing a service for anyone who is obliged by A.N.Other to provide documentation, uniquely signed and sealed, date/time stamped, and legally binding, that bears witness as to identity at birth and current capacity (ie authority), as well as to the veracity of the content of any papers required by A.N.Other, the relying party.....

11. .... While there are differences between civil and common law practices, the notarial act of a qualified practising notary in UK and overseas is recognised by courts of different jurisdictions.

12. Notaries, whether practising alone or in law firms, work independently of the Law Society and are professionally bound to observe the rules and regulations of the Master's Faculty Office. Upon appointment by the Archbishop of Canterbury they take an oath not to act in any way so as to undermine their own personal integrity or that of the notarial profession. Most notaries also practise as solicitors and as such are regulated by the Law Society. The notary takes out professional liability insurance to underwrite his notarisation, and a record of each 'notarial act' is kept in perpetuity for recall should a case be disputed in court.

14. Given that the notarial profession brings with it, as indicated in the above paragraphs, a global dimension, insurance cover, geographical deployment, self regulation, and high levels of expertise, qualification and training, **notaries public and scrivener notaries are uniquely positioned to act as the trustworthy intermediary and enabler that citizens and businesses may be looking to government to provide.** The quis custodiet conundrum [the equivalent of who washes the soap?] cannot be more nearly solved than by the use of notarised authentication.

Discussion: can trust exist without authentication?

18. .... Trust and authentication are muddled concepts.

19. In trying to minimise the risk, government has introduced the notion of somewhat arbitrary trust 'levels' for certain types of electronic transaction. Obligations are put on people to produce specified types of identity document as proof of eligibility, in order to access information data bases at each level **- but this brings new inconsistencies and new management problems.**

Situation today: how to raise public confidence?

21. **The Cabinet Office has just put out for public consultation a document called Transformational Government, claimed in the Foreword by Tony Blair to be a bold strategy calling for Departments to share information, thereby effecting savings and efficiencies and enabling all citizens and businesses to benefit from online access to guidance and benefits. But the identity authentication issue has been given no consideration. While the risk of identity theft is acknowledged as increasing, and IA is mentioned as being crucial to provision of online services [presumably for bona fide persons], there is nevertheless no detail as to how to achieve IA and no indication as to whether or not identity authentication is included in IA. This seems a serious omission from a Strategy paper with serious intent.**

22. At the same time, access to services for citizens is to be facilitated through a new initiative called Connect..... This is a vehicle, probably much needed, for take-up, but can it happen without at least an approved door to knock at if one wants identity checked?

Who are the players and what are the issues?

24. Groups such as central and local government, banking and police, IT and suppliers, professionals and voluntary bodies, all of which have a vested interest in increasing levels of public confidence, should - none of them - ignore the role that notaries could play. As a start:

- specific ministries and departments, for example Cabinet Office, ODPM, DTI, HO, DWP, IR, FCO, should specifically identify where transactions of value or sensitivity may need notarial protection
- local government and voluntary bodies representing beneficiaries should attempt to draw up basic requirements and conditions for e-transactions, indicating where notarial protection would be mandatory, desirable or unnecessary
- the IT industry should design and develop tools that will assist with the blending of old legacy working practices with newly introduced ways of working over a transitional period which may last for years - and in the case of notaries for as long as overseas clients, for legal and cultural reasons, demand
- government officials and parliamentarians should work with lawyers to prevent rushed and inadequately drafted legislation from impeding the whole process of change and causing unanticipated and unwelcome side effects
- notaries should consider how to introduce whatever legal and cultural changes would be found necessary ..... culture change cannot happen until electronic tools can be proven and 'trusted' to preserve - even enhance - the professional excellence of notaries, which is the bedrock of their value at this time.

Proposal for partnership project

28. Such an exercise would have little point or impact .... unless a third [main] objective be added to **give relving (or otherwise interested) parties the opportunity to participate and reassure themselves tha t (a) e-notarised authentication of identity can answer the first two of the Questions hindering widespread take-up of e-working in UK,** and (b) a market exists.....

30. **It follows that if Transformational Government is indeed the bold enabling strategy, as claimed, supporting innovative ways of achieving efficiencies and savings through critical mass use of the internet, then it is reasonable and the right time, from a number of points of view, for The Notaries Society to invite relevant government depart ments to become involved with the proposed pilot project. It is particularly fortuitous that the Transformational Government Strategy paper, backed by all senior Heads of Department and with its commitment to deliver its objectives, should appear at this time.**